

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

James E. McNeil, Individually and as
Next Friend to Elizabeth Ann McNeil
and Jean McNeil, Individually

(b) County of Residence of First Listed Plaintiff Santa Barbara
(EXCEPT IN U.S. PLAINTIFF CASES)

304-CV0625-L

DEFENDANTS

Please see attached Supplemental
Cover Sheet

County of Residence of First Listed Defendant Dallas
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

Please see attached Supplemental
Cover Sheet

Attorneys (If Known)

Please see attached Supplemental
Cover Sheet

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General Habeas Corpus <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input checked="" type="checkbox"/> 791 Empl. Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

V. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

This case is being removed on the ground that Plaintiffs' claims, which constitute "denial of benefits" claims, are completely preempted by the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. Section.

VII. REQUESTED IN COMPLAINT: ☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No 1001-1461.

VIII. RELATED CASE(S) (See instructions):

IF ANY

JUDGE

DOCKET NUMBER

DATE

March 24, 2004

SIGNATURE OF ATTORNEY OF RECORD

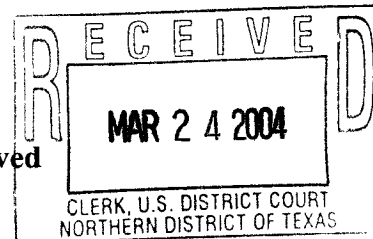
Chenana L. Faust

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

United States District Court
Northern District of Texas

Supplemental Civil Cover Sheet For Cases Removed
From State Court



This form must be attached to the Civil Cover Sheet at the time the case is filed in the U. S. District Clerk's Office. Additional sheets may be used as necessary.

1. State Court Information:

304-CV0625-L

Please identify the court from which the case is being removed and specify the number assigned to the case in that court.

Court

Case Number

191st District Court
Dallas County, Texas

03-08179-J

2. Style of the Case:

Please include all Plaintiff(s), Defendant(s), Intervenor(s), Counterclaimant(s), Crossclaimant(s) and Third Party Claimant(s) still remaining in the case and indicate their party type. Also, please list the attorney(s) of record for each party named and include their bar number, firm name, correct mailing address, and phone number (including area code).

Party and Party Type

Attorney(s)

James E. McNeil, Individually and as
Next Friend to Elizabeth Ann McNeil,
and Jean McNeil, Individually

Plaintiffs

J. Don Gordon
SBN 08200200
Hynds & Gordon, P.C.
500 N. Sam Rayburn Freeway
Suite 200
P.O. Box 1257
Sherman, TX 75091-1257
(903) 892-1807
(903) 893-2015 (fax)

George Parker Young
SBN 22184750
Tylen Di Sciullo
SBN 24009992
Law Offices of George Parker
Young, P.C.
1320 South University, Ste. 405
Fort Worth, TX 76107
(817) 334-0443
(817) 335-3675 (fax)

CIGNA HealthCare of Texas, Inc.
CIGNA Health Corporation,

Defendants

R. Brent Cooper
SBN 04783250
Diana L. Faust
SBN 00793717
Cooper & Scully, P.C.
900 Jackson, Ste. 100
Dallas, TX 75202
(214) 712-9500
(214) 712-9540 (fax)

CIGNA Corporation

Defendant

Larry F. York
SNB 22164000
Scott K. Field
SBN 00793725
York, Keller & Field
816 Congress Avenue, Ste. 1670
Austin, TX 78701
(512) 867-1616
(512) 867-1617 (fax)

Integrated Health Services, Inc.
and Cambridge Group of Texas, Inc.
d/b/a IHS of Dallas at Treemont

Defendants

Stuart B. O'Neill
SBN 15285800
Cowles & Thompson
901 Main Street, Suite 4000
Dallas, TX 75202-3793
(214) 672-2000
(214) 672-2020

Senior Management Services of
Treemont, Inc. d/b/a Integrated
Health Services of Treemont

Defendant

M. Leigh Bartlett
SBN 01844000
Vial, Hamilton, Koch
& Knox, L.L.P.
2800 First City Center
1700 Pacific Avenue
Dallas, TX 75201-4400
(214) 712-4400
(214) 712-4402

3. **Jury Demand:**

Was a Jury Demand made in State Court? ☒ Yes ☐ No

If "Yes," by which party and on what date?

Plaintiffs
Party

October 6, 2003
Date

CIGNA HealthCare of Texas, Inc.
Party

October 8, 2003
Date

4. **Answer:**

Was Answer made in State Court?

☒ Yes ☐ No

If "Yes," by which party and on what date?

Senior Management Services of
Treemont, Inc. d/b/a Integrated
Health Services of Treemont
Party

September 9, 2003
Date

CIGNA HealthCare of Texas, Inc.
Party

September 15, 2003
Date

Integrated Health Services, Inc., and
Cambridge Group of Texas, Inc.
d/b/a IHS of Dallas at Treemont
Party

September 19, 2003
Date

CIGNA Health Corporation (Special
Appearance and, Subject to Special
Appearance Original Answer)
Party

December 19, 2003
Date

CIGNA Corporation (Special
Appearance and Original Answer)
Party

December 19, 2003
Date

5. **Unserved Parties:**

The following parties have not been served at the time this case was removed:

Party

Reason(s) for No Service

Defendants are aware of no unserved parties at this time.

6. **Nonsuited, Dismissed or Terminated Parties:**

Please indicate any changes from the style on the State Court papers and the reason for that change:

Party

Reason

7. **Claims of the Parties:**

The filing party submits the following summary of the remaining claims of each party in this litigation:

Party

Claim(s)

Plaintiffs James E. McNeil,
Individually and as Next Friend
to Elizabeth Ann McNeil,
and Jean Ann McNeil, Individually

Suit for damages resulting from
negligence in the provision of health
care, pursuant to Texas Civil Practice
& Remedies Code Annotated article
4590i, section 4.01, and resulting
negligence in making medical/
insurance benefits determination.

Defendants CIGNA HealthCare of
Texas, Inc. and CIGNA Health
Corporation

CIGNA HealthCare denies Plaintiffs'
allegations and claims.

CIGNA Health Corporation denies
personal jurisdiction exists in Texas
and subject to that, denies Plaintiffs'
allegations and claims.

Defendant CIGNA Corporation

Denies personal jurisdiction exists
in Texas, and subject to that, denies
Plaintiffs' allegations and claims.

Defendants Integrated Health
Services, Inc., Cambridge Group
of Texas, Inc. d/b/a IHS of Dallas
at Treemont

Denies Plaintiffs' allegations and
claims.

Defendant Senior Management
Services of Treemont, Inc. d/b/a
Integrated Health Services of
Treemont

Denies Plaintiffs' allegations and
claims.

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED
MAR 24
CLERK, U.S. DISTRICT COURT
By _____ Deputy

v.

CIGNA HealthCare of Texas, Inc., CIGNA Corporation, CIGNA Health Corporation, Integrated Health Services, Inc., Cambridge Group of Texas, Inc. d/b/a IHS of Dallas at Treemont, and Senior Management Services of Treemont, Inc. d/b/a Integrated Health Services of Treemont,

Defendants.

304-CV0625-L
Civil Action No.

NOTICE OF REMOVAL

TO THE HONORABLE JUDGE OF SAID COURT:

PLEASE TAKE NOTICE that CIGNA HealthCare of Texas, Inc. (“CHC of Texas” or “Defendant”), Defendant in the above entitled and numbered cause, pursuant to 28 U.S.C. §§ 1331, 1441 and 1446, hereby removes to this Court the state court action described below.

1. Plaintiffs are James E. McNeil, an Individual who resides in Santa Barbara, California, and is the father and permanent guardian of Elizabeth McNeil, and Jean McNeil, an Individual who resides in Santa Barbara, California, and is the mother of Elizabeth McNeil (collectively, “Plaintiffs”). Defendants are Integrated Health Services, Inc., a corporation organized and existing under the laws of the State of Delaware; Cambridge Group of Texas, Inc., d/b/a IHS of

Dallas at Treemont (“IHS Treemont”), a Texas corporation licensed to do business in Texas; Senior Management Services of Treemont, Inc., d/b/a Integrated Health Services of Treemont, a Texas corporation licensed to do business in Texas; CIGNA HealthCare of Texas, Inc., a Texas corporation licensed to do business in Texas; CIGNA Corporation, a corporation organized and existing under the laws of the State of Delaware; and CIGNA Health Corporation, a corporation organized and existing under the laws of the State of Delaware.

2. Plaintiffs filed their Original Petition against the Defendants on August 13, 2003, in the 192nd District Court of Dallas County, Texas. The action was entitled *James E. McNeil, Individually and as Next Friend to Elizabeth Ann McNeil, and Jean McNeil, Individually, Plaintiffs, v. CIGNA HealthCare of Texas, Inc., CIGNA Corporation, CIGNA Health Corporation, Integrated Health Services, Inc., Cambridge Group of Texas, Inc., d/b/a IHS of Dallas at Treemont, and Senior Management Services of Treemont, Inc., d/b/a Integrated Health Services of Treemont, Defendants*, Cause No.03-08179-K. The case was transferred to the 191st District Court of Dallas County, Texas, on December 1, 2003. The transferred case bears the same name as the original, but now bears Cause No. 03-08179-J.

3. On February 23, 2004, Plaintiffs filed their Second Amended Petition in the above-referenced case. This case became removable on that date because the Second Amended Petition is the first pleading that raises a federal question. 28 U.S.C. §§ 1331, 1446(b). This Notice of Removal is filed within thirty (30) days of receipt of service of said amended petition. Accordingly, this removal is timely filed under 28 U.S.C. § 1446(b). Moreover, removal is permitted of entire cases where this Court has original jurisdiction as to any claim against any defendant. 28 U.S.C. § 1441(c). Accordingly, so long as one of Plaintiffs’ claims against this Defendant is subject to federal jurisdiction, this Court can take jurisdiction over the entire case.

4. Removal of this case is proper because Plaintiffs' state law claims are completely preempted by the Employee Retirement Income Security Act of 1974 ("ERISA").¹ See 29 U.S.C. §§ 1001-1461. Regardless of Plaintiffs' attempt to artfully plead otherwise, this is nothing more than a "denial of benefits" case arising under ERISA. As shown below, Plaintiffs' Second Amended Original Petition, the first pleading to assert direct liability claims against CHC of Texas, focuses on CHC of Texas' alleged failure to authorize extended benefits at Baylor Specialty Hospital for rehabilitation for Elizabeth Ann McNeil, instead of her transfer to a skilled nursing facility, IHS Dallas at Treemont, where Plaintiffs allege Elizabeth suffered consequential damages. Thus, the claim asserts that CHC of Texas failed to provide appropriate benefits for her medical condition under McNeil's ERISA-governed health benefit plan based, in part, on the exercise of medical judgment:

¹Defendant does not seek removal here in bad faith nor for the purpose of delay. Rather, Defendant acknowledges the Fifth Circuit's opinion in *Roark v. Humana, Inc.*, 307 F.3d 298 (5th Cir. 2002), *cert. granted sub nom., CIGNA HealthCare of Texas, Inc. v. Calad*, 124 S. Ct. 463, 157 L. Ed. 2d 370 (2003). Although the Fifth Circuit held there that a similarly pleaded claim was not completely preempted by ERISA, the United States Supreme Court granted certiorari to review that holding, and the question presented as:

Whether § 502(a) of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1132(a), completely preempts a state-law tort claim seeking damages for an allegedly erroneous determination of entitlement to a benefit under an ERISA-governed health benefit plan when the determination is based in part on the exercise of medical judgment.

Brief for Petitioner CIGNA HealthCare of Texas, Inc. at i, *CIGNA HealthCare of Texas, Inc. v. Calad*, 124 S. Ct. 463, 157 L. Ed. 2d 370 (2003) (No. 03-83). Oral argument is set for March 23, 2004.

Like *Calad*, this case involves the claims of the representative of a participant in an ERISA-governed health benefit plan seeking tort damages under the Texas Health Care Liability Act, codified within Chapter 88 of the Texas Civil Practice and Remedies Code. Specifically, consequential and exemplary damages are sought based on a plan determination of coverage for benefits based in part on the exercise of medical judgment through CHC of Texas' utilization review process.

Plaintiffs filed no direct liability claims against CHC of Texas within their Original and First Amended Petitions, and expressly stated therein that they asserted no claim for denial of benefits. (Original Petition at 11; First Amended Petition at 11). Accordingly, having received an initial pleading asserting such claim through the Second Amended Petition, CHC removes this claim, out of an abundance of caution, in the event the United States Court reverses *Calad*, and provides for complete preemption of Chapter 88 [of the Texas Civil Practice and Remedies Code] claims through ERISA section 502(a).

- a. Elizabeth McNeil . . . seriously injured in an automobile accident . . . had significant brain damage [and] was treated at Baylor University Medical Center, and subsequently at Baylor Specialty Hospital, where [her] condition was steadily improving . . . [w]hile [undergoing] rehabilitati[on]. . . . Her HMO, CIGNA Texas, however, insisted she be transferred to IHS of Dallas at Treemont (“IHS Treemont”), a skilled nursing facility in Dallas, Texas. (Plaintiffs’ Second Amended Petition at ¶¶ 2-4).
- b. IHS [Treemont] was not the appropriate place to care for and treat Elizabeth McNeil considering her medical condition. (Plaintiffs’ Second Amended Petition at ¶ 5).
- c. Cigna Texas became aware, or with the exercise of ordinary care, should have been aware, that IHS Treemont was not equipped to handle Elizabeth, and was not a safe place for someone in Elizabeth McNeil’s condition. (Plaintiffs’ Second Amended Petition at ¶ 8).

5. Defendants CIGNA Corporation and CIGNA Health Corporation, subject to their special appearances contesting personal jurisdiction in the state court, and Defendant Senior Management Services of Treemont, Inc. d/b/a Integrated Health Services of Treemont, consent to the removal. The above-named Defendants’ respective Notices of Consent to Removal are attached hereto as **Exhibit A**.

6. Defendants Integrated Health Services, Inc. and Cambridge Group of Texas, Inc. d/b/a IHS of Dallas at Treemont (collectively the “IHS/Cambridge Defendants”), have not consented to this removal. However, because the direct liability claim asserted against CIGNA HealthCare of Texas, Inc. (the ERISA claim) is separate and independent from the state law claims asserted against the IHS Defendants, no consent is required.² Specifically, the ERISA claim asserted against CHC of Texas, although pleaded as a tort claim under state law, is separate and independent because it

²28 U.S.C. § 1441(c); see *Benoit v. W.W.Grainger, Inc.*, 1998 WL 749444, *5 (E.D. La. 1998) (not designated for publication) (copy attached at **Exhibit D**).

would be removable if sued upon alone³ and is a claim for which only CHC of Texas itself may be held liable.⁴

7. Further pleading, CHC of Texas asserts that Plaintiffs and the IHS/Cambridge Defendants have either entered into an outright settlement of Plaintiffs' case against the IHS/Cambridge Defendants or have entered into an agreement that Plaintiffs will not seek judgment against the IHS/Cambridge Defendants. When asked, counsel for the IHS/Cambridge Defendants will neither confirm nor deny whether Plaintiffs' claims against the IHS/Cambridge Defendants have been settled, but will only say that he "does not believe" there is any agreement between Plaintiffs and the IHS/Cambridge Defendants whereby the IHS/Cambridge Defendants will not consent to removal "either as part of any existing settlement agreement or not." [See letter dated March 22, 2004, from Larry F. York to Stuart B. O'Neill; See reply letter dated March 22, 2004, from Stuart B. O'Neill to Larry F. York (attached hereto as **Exhibits B-1** and **B-2**)]. Plaintiffs have not replied to a similar letter. [See attached letter dated March 22, 2004, from Larry F. York to George Parker Young (attached hereto as **Exhibit B-3**)]. Moreover, the IHS/Cambridge Defendants' insurance carrier has advised that a settlement is being "wrapped up." This situation is similar to that in *Bumgardner v. Combustion Engineering, Inc.*, 432 F.Supp. 1289 (D. S.C. 1977). There, it became apparent during questioning of Defendant A's expert witness by counsel for Defendant B that the questions posed by Defendant B were most helpful to the plaintiff. *Id.* at 1291. Further investigation showed plaintiff had agreed not to execute on any judgment against Defendant B. *Id.* After discovering this agreement, Defendant A removed the case to federal court. *Id.* Although plaintiff

³See *Carl Heck Engineers, Inc. v. Lafourche Parish Policy Jury*, 622 F.2d 133, 136 (5th Cir. 1980) (analyzing separate and independent nature of claims for federal question jurisdiction).

⁴See *Henry v. Independent American Savings Ass'n*, 857 F.2d 995, 999 (5th Cir. 1998).

sought to disavow the agreement, the federal court refused to remand, saying that keeping the non-diverse defendant in the case under those circumstances constituted an attempted fraudulent joinder. *Id.* at 1292. Thus, retaining a non-diverse defendant against whom Plaintiffs have voluntarily discontinued their action for the purpose of destroying diversity jurisdiction constitutes an attempted fraudulent joinder. *Id.*

8. Copies of each document filed in the state court action, except discovery material, are being filed concurrently with the Notice of Removal, as well as the reporter's records of two hearings conducted in the case, as required by Local Rule 81.1. An Index of Documents is attached hereto as **Exhibit C**. Because the documents are too voluminous to be attached, the Index and the documents referenced therein are filed separately and contemporaneously with this Notice of Removal as a single unit. *See* L.R. 81.1(b).

9. Venue is proper in this division and district because Plaintiffs' Second Amended Petition was filed in Dallas County, Texas, which is within the Dallas Division of the United States District Court for the Northern District of Texas. 28 U.S.C. §§ 1441(a), 124(a)(1).

10. No previous application has been made for the relief prayed for in this Notice.


11. In filing this Notice of Removal, CHC of Texas does not waive and expressly reserves all objections and defenses which it may have under Rule 12(b) of the Federal Rules of Civil Procedure and any other rules applicable to this action.

12. CHC of Texas reserves the right to supplement this Notice of Removal with information which may come to light upon further investigation and by adding any jurisdictional bases that may independently support removal.

13. Written notice of the filing of this Notice of Removal will be given to Plaintiff and a copy of this Notice will be forthwith filed with the clerk of the 191st District Court of Dallas County, Texas.

Respectfully submitted,

COOPER & SCULLY, P.C.

By: 

R. BRENT COOPER

Texas Bar No. 04783250

DIANA L. FAUST

Texas Bar No. 00793717

900 Jackson Street, Suite 100
Dallas, Texas 75202
Telephone: (214) 712-9500
Telecopier: (214) 712-9540

**ATTORNEYS FOR DEFENDANT
CIGNA HEALTHCARE OF TEXAS, INC.**

CERTIFICATE OF SERVICE

I hereby certify that on the 24 day of March, 2004, a true and correct copy of the foregoing Notice of Removal, was served on all known counsel of record as indicated below:

Mr. George Parker Young

VIA CMRRR

Ms. Tylene Di Sciullo

The Law Offices of George Parker Young, P.C.

1320 South University Drive, Suite 405

Fort Worth, Texas 76107

Mr. J. Don Gordon

VIA CMRRR

Hynds & Gordon, P.C.

500 N. Sam Rayburn Freeway

Suite 200

P.O. Box 1257

Sherman, Texas 75091-1257

Mr. Stuart B. O'Neil

VIA CMRRR

Cowles & Thompson

901 Main Street, Suite 4000

Dallas, Texas 75202

Ms. M. Leigh Bartlett

VIA CMRRR

Vial, Hamilton, Koch, & Knox, L.L.P.

1700 Pacific Avenue, Suite 2800

Dallas, Texas 75201

Mr. Larry F. York

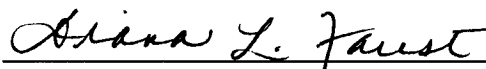
VIA CMRRR

Mr. Scott K. Field

York, Keller & Field

816 Congress Avenue, Suite 1670

Austin, Texas 78701



DIANA L. FAUST